

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED
Aug 20 2008
AUG 20 2008 YM

DERSE, INC.,

Plaintiff,

vs.

3D EXHIBITS, INC.,

Defendant.

No. 08CV4722

Judge Holderman

Magistrate Judge Mason

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**PLAINTIFF'S MOTION FOR PRESERVATION OF EVIDENCE, OR, IN THE
ALTERNATIVE, FOR EXPEDITED DISCOVERY, INCLUDING PRODUCING TO
PLAINTIFF, OR ALLOWING PLAINTIFF ENTRY UPON LAND TO INSPECT,
EXAMINE AND COPY, TANGIBLE AND INTANGIBLE THINGS**

Plaintiff Derse, Inc. ("Derse"), by and through its undersigned attorneys, moves the Court for an Order pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, for the entry of an order requiring Defendant 3D Exhibits, Inc. ("3D") to preserve evidence, or, in the alternative, allowing Derse to conduct expedited discovery, including producing to Derse or, alternatively, having its attorneys and computer forensic experts enter the premises of 3D to inspect, examine and copy, certain computer(s), electronic storage devices of any kind, hard drives, digital cameras, documents and things ("Computer Data") at 3D's premises. In support of this Motion, Derse states as follows:

1. On August 20, 2008, Derse filed this action against 3D, alleging tortious interference with prospective business advantage, inducement of breach of fiduciary duty and common law duties, misappropriation of trade secrets and civil conspiracy to commit tortious interference.¹

¹ On August 20, 2008, Derse also filed a Complaint against Nelson Corazzari in Wisconsin State Court, alleging Breach of Fiduciary and Common Law Duties, Conversion, Destruction of Property, Interference with Corporate

2. Corazzari was a highly compensated senior level executive of Derse who had access to its confidential information and trade secrets, including Derse's pricing, profit margin, cost, client, project files and bid information.
3. On numerous occasions before his abrupt resignation from Derse on or about July 10, 2008, Corazzari accessed, downloaded and/or copied certain computer files containing Derse's confidential information and trade secrets.
4. From July 8, 2008 to July 10, 2008, Corazzari deleted Derse computer programs and files from his Derse laptop, and accessed Derse computer files using external hard drives so that no one could readily detect that he had accessed, downloaded and/or copied Derse computer files containing its confidential information and trade secrets.
5. On or about July 28, 2008, Derse learned for the first time that Corazzari works at 3D.
6. Upon learning that Corazzari had resigned and later learning he had gone to a competitor, 3D, despite his representations to the contrary, Derse conducted computer forensics examinations of Corazzari's computers. Consequently, the conduct described herein was not discovered until recently.
7. As alleged in the Complaint in this case, prior to and subsequent to his resignation from Derse and the commencement of his employment with 3D, Corazzari and other 3D employees, formerly employed by Derse, unlawfully misappropriated Derse's confidential information and trade secrets, raided Derse's employees, and

Opportunities, Claim for Relief Under Wis. Stat. § 895.446 - - Civil Theft, Claim for Relief Under Wis. Stat. § 943.70 - - Unauthorized Computer Access, Trade Secret Theft Under Wis. Stat. § 134.90, Unfair Trade Practices, Tortious Interference with Business Relations and Advantage, Replevin, Declaratory Judgment and Injunctive Relief. That action is pending in the Circuit Court of Waukesha County in Wisconsin, where Corazzari resides.

obtained Derse's clients and business opportunities. In fact, in or about December, 2007, 3D admitted to Derse that raiding Derse's and other competitors' employees and accounts was a part of 3D's business plan.

8. Given Corazzari's unlawful conduct while still employed with Derse, it is likely that he, now an agent of 3D, or others at 3D, may take further action to delete computer data to conceal past and additional unlawful conduct.
9. As a result of 3D's apparent unlawful conduct, including its use, and inevitable additional use, of Derse's confidential information and trade secrets, raiding of Derse's employees and obtaining Derse's clients and business opportunities, Derse seeks an order requiring 3D to preserve all electronically stored information and documents related to the conduct alleged in this Complaint, and permitting Derse to conduct expedited discovery, such as producing the Computer Data to Derse or, alternatively, enabling its attorneys and computer forensic experts to inspect, examine and copy the Computer Data at 3D's premises.
10. The relief sought herein is requested in order to obtain evidence of 3D's use, destruction, conversion, misappropriation and manipulation of Derse's computer data, network system information, and trade secrets because such computer(s), documents and other things that Derse seeks to inspect are moveable and easily altered or destroyed. Immediate inspection, examination and copying of the Computer Data described herein must be had in order to preserve evidence in this action.

WHEREFORE, Plaintiff Derse, Inc. requests that this Court enter an order requiring Defendant 3D Exhibits, Inc. to preserve all electronically stored information and documents

related to the conduct alleged in this Complaint, or, in the alternative, allow Derse to conduct expedited discovery, including producing the Computer Data to Derse or, alternatively, enabling its attorneys and computer forensic experts to enter the premises of 3D to inspect, examine and copy the Computer Data, and granting Derse such further relief as this Court deems appropriate.

Dated: August 20, 2008

Respectfully submitted,

Derse, Inc., Plaintiff

By:


One Of Its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, a non-attorney, certify that I caused a copy of the foregoing *Plaintiff's Motion for Preservation of Evidence, or, in the Alternative, for Expedited Discovery, Including Producing to Plaintiff, or Allowing Plaintiff Entry Upon Land to Inspect, Examine and Copy, Tangible and Intangible Things*, to be served via facsimile and postage prepaid first class United States mail upon:

Patrick C. Keeley, Esq.
Piccione, Keeley & Associates, Ltd.
County Farm Professional Park
122C South County Farm Road
Wheaton, Illinois 60187-4523

Dated: August 20, 2008


Julie M. Stieg